

Gina Harrison

Director

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EX PARTE

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

Re: GEN Docket No. 90-314 - Amendment of the Commission's Cellular PCS Cross-Ownership Rule

Attached is a written ex parte responding to a letter filed by Cox Enterprises, Inc., regarding the PCS Safeguards Plan filed by Pacific Bell, Nevada Bell, Pacific Bell Mobile Services, and Pacific Telesis Mobile Services. Please associate this with the above referenced proceeding.

We are submitting two copies of this notice in accordance with Section 1.1206(a)(1) of the Commission's Rules

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,

Gina Harrison / ac

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October 19, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: GEN Docket 90-314, PCS Safeguards Plan filed by Pacific Bell, Nevada Bell, Pacific Bell Mobile Services and Pacific Telesis Mobile Services:

Dear Mr. Caton:

This letter is in response to a letter filed by Cox Enterprises, Inc., ("Cox") on October 12, 1995 regarding our PCS Safeguards Plan.¹ In its letter Cox continues to argue for additional rulemakings, particularly with respect to new accounting rules for the provision of PCS service by a LEC. Again, its comments demonstrate a lack of understanding of the record for the provision of PCS as well as the record in the establishment of the accounting rules.

Cox asserts that Pacific Bell "now admits that until proper rules are established Part 64 rules do apply to its PCS business."² We agree that the Part 64 accounting rules and Part 32.27 apply to PCS but we have never agreed that they should only be applied on an interim basis until new accounting rules for PCS can be developed. On the contrary, we have stated very clearly that the current accounting rules are sufficient.³ The Commission is in complete agreement with us. In the Second Report and Order it specifically stated: "[W]e do not believe the commenters have justified imposing additional cost accounting rules on LECs that provide PCS service."⁴

A large part of Cox's position stems from a fundamental misunderstanding of the origin of the cost accounting rules. Cox states that "the Part 64 rules were developed in the Computer III proceeding."⁵ Therefore Cox states that "Pacific Bell ignores the serious question of whether regulations designed to oversee the development of the enhanced services market sufficiently address LEC incentives in a vastly different market."⁶ The cost

¹ In the interest of a complete record in this proceeding, we request a waiver to file this additional pleading under 47 CFR Section 1.45(c).

² Cox, p. 4.

³ Reply Comments, p. 12.

⁴ In the Matter of the Commission's Rules to Establish New Personal Communications Services, CC Docket No. 90-314, 8 FCC Red 7700, para. 126 (1993). Cox continues to raise a concern that none of the PCS orders specifically addressed LEC acquisition of in-region 30 MHz PCS licenses. As we explained in our Reply, the Commission was informed of our plans to bid for a 30 MHz license. The lack of any specific reference to LECs with 30 MHz licenses, means that the Commission decided not to create different regulatory structures based on the amount of spectrum. It does not support an argument that a rulemaking on LEC provision of PCS with a 30 MHz license is necessary. With respect to the issue of cross subsidy and non-discriminatory interconnection, it makes no sense to impose different rules based on whether a licensee has a license for 10 MHz or for 30 Hz. Either the rules achieve their purpose or they don't. Here they do. The amount of spectrum is irrelevant.

⁵ Cox, p. 4.

⁶ Id.

accounting rules are relevant to the Computer III proceeding but they did not originate in the Computer III proceeding. They were developed in CC Docket No. 86-111, In the Matter of Separation of Costs of Regulated Telephone Service from the Costs of Nonregulated Activities, Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions between Telephone Companies and Their Affiliates.⁷ They describe the proper accounting treatment for all non-regulated services, not just enhanced services.

Cox continues this erroneous line of argument by stating that the "Commission made it very clear that the Computer III regime was not intended to apply to basic common carrier services such as PCS."⁸ It cites to a page of a Computer III order relating to whether protocol processing should be treated as a basic or enhanced service. This has no relevance to the issue of the proper accounting treatment of PCS. The only issue for accounting purposes is whether a service is regulated or nonregulated. Consistent with Commission policy, since PCS is not a rate regulated service, we are treating it as nonregulated for federal accounting purposes.

Cox also claims that "Pacific Bell asserts that accounting standards alone provide sufficient safeguards for LEC provision of a new service."⁹ Cox goes on to state: "Of course, this has never been the Commission's view. In every case where LEC sought to enter new communications markets, the Commission has linked cost accounting with other pro-competitive safeguards designed specifically for the task or modified its rules to be responsive to the particular competitive concerns of the market."¹⁰

We have not said anywhere that accounting safeguards alone are a sufficient safeguard and Cox does not provide a cite. The two required components of a safeguards plan are protection against cross-subsidy and non-discriminatory interconnection. Consequently, the Commission has specifically recognized that cost accounting alone is not enough. Our Plan covered both cross-subsidy and non-discriminatory interconnection. In addition, we have voluntarily added compliance with Customer Proprietary Network Information ("CPNI") and network disclosure obligations to our plan.

We said that the current accounting rules are sufficient. As noted above, the Commission has said the same thing. The accounting rules were developed for all nonregulated services.¹¹ The whole purpose of the accounting rules was to create a system "that would inhibit carriers from imposing on ratepayers for regulated interstate services the costs and risks of nonregulated ventures."¹² By treating PCS costs as nonregulated for federal accounting purposes, that result is achieved. There is no need to look further to protect the customers of regulated interstate service from paying for PCS services. Yet Cox refuses to acknowledge this fact. What Cox really wants is to delay our market entry and reduce

⁷ In the Matter of Separation of Costs of Regulated Telephone Service from the Costs of Nonregulated Activities, CC Docket No. 86-111, Report and Order, 2 FCC Red 1298 (1987).

⁸ Cox, pp. 4-5, n. 15.

⁹ Cox, p. 2.

¹⁰ Id. at pp. 2-3.

¹¹ In the Matter of Separation of Costs of Regulated Telephone Service from the Costs of Nonregulated Activities, CC Docket No. 86-111 2 FCC Red 1298, para. 1 (1987).

¹² Id.

competition for Cox. Moreover, Cox provides no compelling reason for the Commission to depart from its prior conclusion with respect to the accounting rules.

Cox also questions the power of price cap regulation to prevent cross subsidy.¹³ Despite our statements that PCS will be provided by a separate subsidiary Cox seems to assume that PCS costs will somehow be used to reduce LEC efficiencies and result in a lower productivity factor. It is unclear how Cox expects this to be achieved especially since the PCS service is part of a separate wireless network that will not affect the efficiency of the regulated landline network. PCS is not like video dial-tone which is a rate-regulated service integrated with the landline network and which shares joint and common costs that should promote efficiencies.

With respect to interconnection, Cox questions Pacific Bell's commitment to reasonable and non-discriminatory interconnection.¹⁴ However, it makes no substantive claims. It makes general statements such as "the pricing of interconnection will in large measure determine whether non-LEC PCS providers can succeed."¹⁵ We don't dispute that interconnection prices are important to PCS providers but they are important to LEC and non-LEC PCS providers equally because the prices are the same for both. As we stated in our Reply, the contract that PBMS has with PB has no unique rates nor unique types of interconnection.

Cox also raises the issue of mutual compensation.¹⁶ We outlined our view on mutual compensation in the interstate arena in our reply comments.¹⁷ Cox now cites to a filing that we made at the state level with respect to adoption of a bill and keep methodology related to the promotion of local competition by certified competitive local exchange carriers. This has little or no relevance to the issue of interstate mutual compensation for wireless interconnection. However, if the Commission is interested in understanding our position on that issue as it relates to the regulation of local competition we would be happy to provide more information.

In conclusion, there is no reason to initiate any further rulemaking prior to approval of our plan. The current rules to protect against cross subsidy and to provide for non-discriminatory interconnection are sufficient and are well-established. Our plan fully complies with them. We relied on the rules when we bid and paid \$696 million for our licenses. It would be wrong to change the rules now. Cox's comments should be seen for what they are: a competitor's continued attempt to use the regulatory process to delay introduction of our service.

Yours truly,


Betsy Stover Granger
Attorney

cc: See attached service list

¹³ Cox, p. 5.

¹⁴ Cox, pp. 6-7.

¹⁵ Cox, p. 6.

¹⁶ Id. pp. 6-7.

¹⁷ Reply, pp. 39-40.

CERTIFICATE OF SERVICE

I, Michelle C. McSoley, hereby certify that a copy of the foregoing letter was sent via first-class U.S. mail, postage prepaid, or by hand delivery, on October 24, 1995, to the following:

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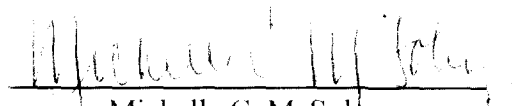
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